1549.

SUPREME COURT OF THE UNITED STATES

No. 149.

JACOB BECKWITH, PLAINTIFF IN ERROR,

vs.

THOMAS J. HALDERMAN ET AL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR OHIO.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and service	2	2
Proceedings in superior court	3	3
Declaration filed in circuit court	7	7
Plea and issue joined	9	8
Jury sworn	9	8
Verdict and judgment	10	9
Bill of exceptions	11	10
Exhibit A, referred to in bill of exceptions	15	12
Clerk's certificate	19	15
Assignment of errors	19	15

J. & G. S. Gideon, printers.

THE UNITED STATES OF AMERICA:

To the honorable the judges of the circuit court of the United States for the seventh circuit and district of Ohio, greeting:

Whereas in the record and process, and also in the rendering judgment in a certain action of trespass on the case, which was in the said court, between Thomas J. Halderman, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker, plaintiffs, and Jacob Beckwith, impleaded with Edward Sturgeon, Wm. Irwin, John Miller, Goodman Bowman, Matthew Ferguson, and John Irwin, defendants, manifest error hath intervened, as it is said, to the great damage of the said Jacob Beckwith, as by his complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this twenty-third day of August, in the [SEAL.] year of our Lord one thousand eight hundred and forty-seven, and in the seventy-second year of the American independence.

Attest: WM. MINER, *Clerk.*

I allow a writ of error in this case.

JOHN McLEAN,
Justice Sup. Court, U. States.

We acknowledge service of a copy of this writ of error.

CHARLES FOX, *Attorney.*
T. D. LINCOLN,
For defendants in error.

Cincinnati, August 30th, 1847.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States:

To Thomas J. Halderman, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker, greeting:

Whereas Jacob Beckwith has obtained the allowance of our writ of error to the circuit court of the United States for the seventh circuit and district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and

judgment in an action of trespass on the case, wherein you, the said Thomas J. Halderman, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker, in that action lately recovered against the said Jacob Beckwith, (who was impleaded with Edward Sturgeon, William Irwin, John Miller, Goodwin Bowman, Matthew Ferguson, and John Irwin,) the sum of nine thousand nine hundred and eighty-two dollars and forty-six cents damages and costs, as by the said record in the said circuit court and district aforesaid remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Jacob Beckwith we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be; you are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this twenty-third day of August, in the year [SEAL.] of our Lord one thousand eight hundred and forty seven, and in the seventy-second year of the American independence.

Attest: JOHN McLEAN.

We acknowledge service of a copy of this citation.

CHARLES FOX, *Attorney.*
T. D. LINCOLN,
Attorney for defendants in error.

Cincinnati, August 30th, 1847.

Pleas began and held at the court-house in the city of Columbus, on the third Monday in the month of July, being the nineteenth day of that month, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States of America the seventy-second, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States for the district of Ohio.

Among the proceedings had were the following, to wit:

THOMAS J. HALDERMAN et al., plaintiffs,
vs. } In case.
JACOB BECKWITH et al., defendants.

Be it remembered, that heretofore, to wit, on the ninth day of October, in the year of our Lord one thousand eight hundred and forty-five, came the said defendants, by their attorneys, and filed in the clerk's office of said court the proceedings had in a certain cause lately pending in the superior court of Cincinnati, in the State of Ohio; which said transcript is in the words and figures following, to wit:

Superior court of Cincinnati, October term, A. D. 1845.

STATE OF OHIO, *Hamilton county, sct:*

THOMAS J. HALDERMAN, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker.
vs.
JACOB BECKWITH, Edward Sturgeon, William Irwin, John Miller, Goodwin Bowman, Mathew Ferguson, and John Irwin.
} Trespass.

Be it remembered, that heretofore the State of Ohio sent her certain writ to the sheriff of Hamilton county, aforesaid closed in the words and figures following, to wit:

STATE OF OHIO, *Hamilton county, sct:*

To John H. Gerard, esq., sheriff of our said county, greeting:

You are hereby commanded to summon Jacob Beckwith, Edward Sturgeon, William Irwin, John Miller, Goodwin Bowman, Mathew Ferguson, and John Irwin, if they shall be found in your bailiwick, to be and appear before the honorable Charles D. Coffin, judge of the superior court of Cincinnati in and for said county, on the 1st Monday of October next, to answer unto Thomas J. Halderman, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker, in an action of trespass to the damage of the said plaintiffs twenty-five thousand dollars, as is said, and have then there this writ.

In witness whereof I have hereunto set my hand and affixed the [L. S.] seal of said court, at Cincinnati, this 30th day of September, A. D. 1845.

DAN'L GANO,
Clerk superior court Cincinnati.
By JAS. H. SAYRE, *Deputy.*

And the said writ was endorsed as follows, to wit: Summons in action of trespass for running down plaintiff's steamboat Yorktown; damages $25,000 00; and also with the said sheriff's return thereon, as follows, to wit: 30 September, 1845, served personally, by copy, on Jacob Beckwith; not found, as to Edward Sturgeon, William Irwin, John Miller, Goodwin Bowman, Mathew Ferguson, and John Irwin.

J. H. GERARD, *Sheriff.*

And afterwards, to wit, on the sixth day of October, in the year last aforesaid, comes the defendant, Jacob Bethwith, by his attorney, and files his petition, closed in the words and figures following, to wit:

1551/

SUPERIOR COURT OF CINCINNATI,
In and for the county of Hamilton, and State of Ohio.

THOMAS J. HALDERMAN, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker.
vs.
JACOB BECKWITH, Edward Sturgeon, William Irwin, John Miller, Goodwin Bowman, Mathew Ferguson, and John Irwin.

Case.
Damages $25,000 00.
(No. 199.)

Your petitioner, Jacob Beckwith, upon whom alone process has been served, would respectfully state that he, as well as all the other defendants named in the above suit, are non-residents of this State, and reside in the State of Kentucky; that the plaintiffs reside in the State of Ohio; that the matter in dispute in this case exceeds the sum of five hundred dollars, exclusive of costs; and in fact the damages are laid at $25,000 00, as appears by the process, to which he refers as a part hereof; that he is ready to give bond and sufficient security, according to the statute of the Congress of the United States in that case made and provided, that is to say, Jacob Strader, esq., your petitioner, therefore prays that your honor will proceed no further in the case, (which is numbered on your docket 199,) and that it be removed for trial to the circuit court of the United States, in and for the district of Ohio; and that your honor will make such order in the premises as the case requires; and he will ever pray, &c.

JACOB BECKWITH.
By his attorney for that purpose, JOHN W. TYLER.

And afterwards, to wit, on the sixth day of October, in the year aforesaid, at the term of October in said year, the court order as follows, to wit:

THOMAS J. HALDERMAN and others,
vs.
JACOB BECKWITH and others.
Case No. 199.

This day came the defendant, Beckwith, by his attorney, and filed his petition in this case, praying that the same may be removed to the circuit court of the United States in and for the district of Ohio, and offering Jacob Strader as security, &c. Whereupon, it is ordered by the court that this cause be removed to the said circuit court of the United States in and for the district of Ohio, upon condition that said Jacob Strader shall execute and file with the clerk of this court his bond to the plaintiffs in the penalty of $500, conditioned that said Beckwith shall enter in said circuit court on the first day of its next session copies of the process in this cause as required by the statute of Congress of the United States in such case made and provided, which are hereby ordered to be delivered to the said Beckwith, with a copy of this order; and now appears also the said Strader, and executes said bond, which is

accepted, and all further proceedings in this cause stayed, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, Jacob Beckwith and Jacob Strader, of the county of Hamilton and State of Ohio, are firmly bound unto Thomas J. Halderman, in the sum of five hundred dollars, good and lawful money of the United States of America, for the payment of which we bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated at Cincinnati, this 6th of October, 1845. The condition of this obligation is such, that if said Beckwith shall enter in the circuit court of the United States in and for the district of Ohio, on the first day of the next term thereof, copies of the process in a certain cause, Thomas J. Halderman et als., vs. Jacob Beckwith et als., heretofore pending in the superior court of Cincinnati, as is required by the statute of the Congress of the United States, in such case provided, which, on motion and petition, is ordered by said superior court to be removed as aforesaid, which case is app'ce, No. 199, to October term, 1845, pursuant to the order of said court this day made, then this obligation to be void; otherwise in full force and virtue.

JACOB BECKWITH. [SEAL.]
By JOHN W. TYLER.
JACOB STRADER. [SEAL.]

Signed and acknowledged in presence of—

DANL. GANO, *Clerk.*

STATE OF OHIO, *Hamilton county, sct:*

I, Daniel Gano, clerk of the superior court of Cincinnati, in and for said county, do hereby certify, that the above and foregoing are true copies of the process, petition, entry on the journal of said court, and bond given in the case wherein Thomas J. Halderman, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker, are plaintiffs, and Jacob Beckwith, Edward Sturgeon, William Irwin, John Miller, Goodwin Bowman, Matthew Ferguson, and John Irwin, are defendants, as appears from the files of my office.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of the said court, at Cincinnati, this seventh day of October, anno domini 1845.

DANL. GANO, *Clerk.*

STATE OF OHIO, *Hamilton county, sct:*

I, Charles D. Coffin, sole judge of the superior court of Cincinnati, in and for said county, do hereby certify, that the above and foregoing attestation by Daniel Gano, clerk of said court, is in due form of law.

In witness whereof I have hereunto set my hand and seal, this seventh day of October, in the year of our Lord one thousand eight hundred and forty-five, at Cincinnati.

C. D. COFFIN.

And afterwards, to wit, at the December term of said circuit court, in the year of our Lord one thousand eight hundred and forty-five, this cause was continued. And afterwards, to wit; on the twenty-ninth day of June, in the year of our Lord eighteen hundred and forty-six, came the plaintiffs, by Messrs. Fox and Lincoln, their attorneys, and filed in the clerk's office of said court their declaration herein, in the words and figures following, to wit:

Declaration.

Seventh circuit of the United States, Ohio district, December term, eighteen hundred and forty-five, Ohio district, sct:

Jacob Beckwith impleaded in the superior court of Cincinnati, in said district, with Edward Stergeon, William Irwin, John Miller, Goodman Bowman, Mathew Ferguson, and John Irwin, as to the latter of whom the writ was returned, that said parties were not found, was summoned to answer unto Thomas J. Halderman, George W. Walker, Charles H. Kellogg, John Kennett, Sheldon J. Kellogg, and Franklin Parker, in a plea of trespass on the case, and which suit the said Jacob Beckwith, by petition, showing that he was a citizen and resident of the State of Kentucky, removed from the said superior court of Cincinnati agreeably to the act of Congress of the United States in such case made and provided, unto the seventh circuit court, where it now is; and thereupon the said plaintiffs, by Fox and Lincoln, their attorneys, complain, for that heretofore, to wit, on the 16th day of March, 1845, at the district aforesaid, the plaintiffs were then and there owners, and were possessed of a certain steamboat, called the Yorktown, and then navigating the Mississippi river, at Dead Man's bar, to wit, in the district aforesaid; and the defendant, together with said Stergeon, William Irwin, Miller, Bowman, Ferguson, and John Irwin, were then and there the owners, and were possessed of another steamboat, called the Talma, then navigating the Mississippi, at Dead Man's bar, to wit, in the district aforesaid, and then and there had the care, direction, and management of the same, by themselves and their servants; and the said defendants and the other owners as aforesaid of said steamboat Talma, by their servants and agents, did then and there so unskilfully, negligently, and carelessly, manage and navigate said steamboat Talma, that by reason of the unskilfulness, negligence, and carelessness, in the management and navigating said steamboat Talma, she did then and there run into the said steamboat Yorktown, belonging to the plaintiffs as aforesaid, with great force and violence, and did then and there greatly break and damage the said steamboat last aforesaid, so that the plaintiffs were compelled to lay out and expend, and have laid out and expended, a large sum of money to repair the same, to wit, the sum of five thousand dollars; also a large sum of money in bringing said boat from New Orleans to Cincinnati, Hamilton county, Ohio, where she would be properly repaired, it being impossible to repair her at New Orleans; also in a large sum of money, to wit, three thousand dollars, which the plaintiffs were compelled to pay the crew and hands on board said boat for a long time, while she was

repairing, to wit, for twenty days. And the plaintiffs were also damaged by reason of said collision in a large sum, to wit, the sum of ten thousand dollars, by being deprived of the use of said steamboat for a long time, to wit, thirty days, being the earnings and profits which said boat would have received during the time she laid up in repairing, had it not been for said collision, which said steamboat Yorktown was prevented from earning by said collision. And the plaintiffs were also damaged in a large sum of money, to wit, the sum of one thousand dollars, on account of personal property by them owned, which was at the time on said boat, and which was destroyed by said collision. And, also, in a large sum for other property on said boat belonging to plaintiffs, which was necessarily thrown overboard to prevent the said steamboat from sinking with her cargo, to the damage of the plaintiffs in the sum of twenty-five thousand dollars, and therefore they sue.

FOX & LINCOLN,
Attorneys for Plaintiffs.

And afterwards, to wit, on the said twenty-ninth day of June, in the year of our Lord eighteen hundred and forty-six, came the said defendants, by Messrs. Walker and Kebler, their attorneys, and filed in said clerk's office their plea to said declaration, in the words and figures following, to wit:

Plea.

SEVENTH CIRCUIT, UNITED STATES,
Ohio district, December term, 1845.

JACOB BECKWITH et al. ads. THOMAS J. HALDERMAN. } Plea.

And the said defendants come and plead to the said declaration, and say, that they are not guilty in manner and form as the said plaintiffs have therein alleged, and of this they put themselves upon the country; and the said plaintiffs do the like.

WALKER & KEBLER,
Attorneys for defendants.

And afterwards, to wit, at the July term of said court, in the year aforesaid, came the parties, by their attorneys; and thereupon, on motion of the plaintiffs and affidavit filed, this cause is continued at the costs of said plaintiffs.

And afterwards, to wit, at the November term of said court, in the year last aforesaid, on motion of the plaintiffs, by their attorneys, this cause is continued at the costs of said plaintiffs.

And now, at this term of July, to wit, on Tuesday, the tenth day of August, in the year of our Lord one thousand eight hundred and forty-seven, came the parties, by their attorneys, and thereupon came a jury, to wit:

Augustus Witte, William H. Smith, Daniel Protsman, William A. Oliver, Stoughton Bliss, John T. Blain, Elijah Spurgeon, Salmon

Thomas, Asa Tyler, Samuel Ross, Lewis J. Moeller, and Tobias S. Haskins, who were duly empannelled and sworn to speak the truth upon the issue joined between the parties; but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 8 o'clock.

And afterwards, to wit, on Wednesday, the eleventh day of August, in the year and at the term last aforesaid of said court, came the parties aforesaid, by their attorneys, and also the jurors aforesaid; but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 8 o'clock.

And afterwards, to wit, on Thursday, the twelfth day of August, in the year and at the term last aforesaid of said court, came the parties aforesaid, by their attorneys, and also the jurors aforesaid; but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 8 o'clock.

And afterwards, to wit, on Friday, the thirteenth day of August, in the year and at the term last aforesaid of said court, came the parties, by their attorneys, and also the jurors aforesaid, and by consent of parties, by their attorneys, it is ordered, that William H. Smith, one of the jurors empannelled and sworn in this case be excused, and that the remaining jurors try the case; and the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 8 o'clock.

And afterwards, to wit, on Saturday, the fourteenth day of August, in the year and at the term last aforesaid of said court, came the parties aforesaid, by the attorneys, and also the jurors aforesaid, and by consent of parties, by their attorneys, it is ordered, that Lewis J. Moeller, one of the jurors heretofore empannelled and sworn in this case, be excused, and that the remaining ten jurors try the case; and the investigation of this case being completed, and the arguments of counsel heard, the said jurors, after receiving the charge of the court, retired to their chamber to consider of their verdict.

And afterwards, to wit, on Monday, the sixteenth day of August, in the year and at the term last aforesaid of said court, came the parties aforesaid, by their attorneys, and also the jurors aforesaid; and thereupon the said jurors upon their oaths do say, that the said defendants are guilty in manner and form as the said plaintiffs have complained against them; and they assess the damages of the said plaintiffs, by reason of the premises, to nine thousand nine hundred and eighty-two dollars and forty-six cents.

Therefore, it is considered, that the said plaintiffs recover of the said defendants the said sum of nine thousand nine hundred and eighty-two dollars and forty-six cents, their damages aforesaid by the jurors in form aforesaid assessed, and also their costs in this behalf expended, taxed to $\$556\frac{96}{100}$.

Upon the trial of this cause the said defendants, by their attorneys, tendered a bill of exceptions to the opinion of the court, upon the points set forth in said bill of exceptions, and pray that the same may be sign-

ed and enrolled, and made a part of the record in this cause, which is accordingly done, and is in the words and figures following, to wit:

THOMAS J. HALDERMAN et als.
vs.
JACOB BECKWITH.

Bill of exceptions.

Be it remembered, that upon the trial of this cause the plaintiffs, among other things, proved that the steamboat Yorktown, owned by them, was descending the Mississippi river at Dead Man's bar, in the State of Louisiana, at the rate of eight to twelve miles per hour, straight down stream, parallel to the Louisiana shore, at a distance of from one hundred and fifty to three hundred yards from said shore, on the morning of the 16th March, 1845, between one and two o'clock, it being then star-light.

That the defendant and those impleaded with him were the owners of the steamboat Talma, which was ascending the said river at the same time and place, at the rate of from six to nine miles per hour, and that a collision then and there took place between the said boats, which resulted in injury to the said Yorktown. That said Yorktown was owned in Cincinnati, and running from Cincinnati to New Orleans and back; and the Talma was owned at Louisville, Kentucky, and running from Louisville to New Orleans and back; these being their respective trading ports.

The plaintiffs also gave evidence tending to prove that said collision was caused by the negligent and unskilful navigation of the Talma; and that the Yorktown made use of ordinary skill and care to avoid the collision, in the course of which it appeared that said Yorktown did not ring her large bell, and did not stop her engines until within one hundred and fifty or one hundred and sixty yards of the Talma, when a collision had become almost, if not quite, inevitable, and did not back her engines at all, but did stop her engines as soon as the officers on board of her became apprehensive of danger by an alleged sudden turning out by the Talma across the river, from the Louisiana shore, her proper place for ascending, and did prepare to back her engines; and her pilot, with a view of avoiding collision, had given an order to go forward, when the collision took place, but the engines were not started forward. And thereupon, the plaintiffs claimed damages for the following items of damage, of which they offered proof.

First. For the expense and delay of the Yorktown at the place of collision, and at New Orleans, her port of destination.

Second. For the expense and delay of taking said Yorktown to Cincinnati, which it was admitted by the parties to be the most suitable port for making the repairs.

Third. For the loss of time in the use of said boat, while she was undergoing said repairs, which was proved to be two months.

Fourth. For the cost of said repairs, which were proved to be ($3025 07,) three thousand twenty-five dollars and seven cents.

1354.

Fifth. For the diminished value of said boat, after she was repaired, from loss of reputation or otherwise.

Sixth. For interest upon all the items from the time said boat was repairing.

And thereupon the defendants produced a statute of the State of Louisiana, entitled "An act relative to steamboats," passed March 6th, 1834, a copy of which is hereto annexed, marked A, and made part hereof; by the tenth section of which it is provided, as follows:

"That it shall be the duty of the master and pilot of a steamboat, when descending any river or stream, in the night, within the limits of this State, when within one mile of an ascending boat, to shut off the steam and ring the bell, and permit the boat to float upon the current of the river until the ascending boat shall have passed; and the master and owner of the ascending boat shall then assume the responsibility of steering clear of the descending boat, and to be liable in damages to the extent of the injury which shall be sustained."

And thereupon the defendants requested the court to charge the jury that this act governed the case, and was a bar to a recovery by the plaintiffs; which charge the court refused to give, but did charge that the act was void, as a law, for want of power in the legislature of Louisiana to pass the same, except as to boats exclusively navigating waters within the State of Louisiana, but might be received by the jury as a fact going to show what the said legislature regarded as prudent navigation.

The defendants also gave evidence tending to show that the Talma was coming up the river in her right place, near the Louisiana shore, and rang her big engine bell, and stopped her engines, and commenced backing as soon as a collision was apprehended by her officers, and was in the act of backing when the collision took place, which was somewhere within three hundred yards of the Louisiana shore—the river being about one mile wide at that place; and adduced the evidence of twenty-five pilots to show that the most prudent and usual course of navigation for the descending boat, in the night season, even at the high stage of water which then existed, would have been to descend in the main channel of the river, which, at that place, was near the Mississippi shore, and more than half a mile from the place of collision; and, if there were danger of collision, to ring her alarm bell, and stop her engines, and float and back her engines when danger became *eminent*, which course is pursued by many pilots, though not by a majority. The plaintiffs having previously introduced evidence of fifty-five pilots navigating said river to show that it was the most usual course of navigation, at the place of collision, for descending boats to navigate between one hundred and fifty and three hundred yards from the Louisiana shore, and the ascending boat to navigate from twenty to fifty yards from the Louisiana shore. And thereupon the counsel for the defendants requested the court further to charge the jury as follows:

First. In order to recover, in this case, the plaintiff must satisfy you that the collision was caused wholly by the fault of the defendants, and that no fault of the plaintiffs contributed thereto.

Second. That if it was a case of mere misfortune, of mixed fault, or of inscrutable fault, plaintiffs cannot recover.

Third. The issue to be tried is negligence or not; and if the negligence of plaintiffs contributed to the collision, they cannot recover.

Fourth. No usage of navigation can sanction a departure from the rules of prudence and safety.

Fifth. The rule of damages, if plaintiffs recover, is the cost of repairs, and the expense of bringing the boat to the place of repairing.

The second, third, and fourth of which instructions were given, as requested.

But the court refused to give the first charge, and refused to give the fifth charge in the language asked, and charged the jury as follows, in lieu of the first charge asked: That if the plaintiffs were making use of ordinary care and caution, and running according to the most usual course of navigation at that place, although such course might not be the most prudent and safe, in the opinion of some individuals, nor the course pursued by many pilots, less than a majority, this was sufficient to entitle them to a verdict, if the jury believed the collision was occasioned by the fault, negligence, or unskilfulness of the defendants' officers navigating the Talma; that no usage could be respected in a court of justice which was not founded on prudential considerations, and such as tended to the safety of navigation. But extreme caution was not required. The plaintiffs must show that they were descending the river in the ordinary course of descending boats, and that they exercised ordinary prudence and skill, under the circumstances, to avoid the collision; that if the Talma took a shear across the river, running her bow square into the Yorktown as she was descending the river, and it was not in the power of the helmsman of the Talma to prevent such a shear, the fact should be proved in excuse.

And the court charged, in lieu of the fifth instruction asked, that, if the plaintiffs recovered at all, they were entitled to recover the five first items above mentioned, except so much of the fifth item as related to loss of reputation; and as to the sixth item, that of interest, the court refused to charge either way, but left it to the discretion of the jury.

To all which refusals to charge, and charges given not according to the request of the defendants, the defendants except, and pray the court to sign and seal this their bill of exceptions, which is accordingly done, and ordered to be made a part of the record.

JOHN McLEAN. [SEAL.]

The following is the exhibit marked A, and referred to in the foregoing bill of exceptions.

An act relative to steamboats. Exhibit A.

Sec. 1st. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the Governor shall appoint one engineer, who shall hold his office for two years, unless removed as hereinafter provided, and whose duty it shall be, on application, carefully and fully to examine the machinery of

steamboats arriving in the port of New Orleans, and that the strength of the boilers, by hydraulic pressure, equal to three times the pressure the boilers may be supposed capable of carrying in steam; and, when found in good and safe condition, shall furnish a certificate setting forth the fact, and specifying the weight of steam that may, with safety, be carried; for which certificate he shall be entitled to receive, for every boat of twenty to fifty tons, five dollars; from fifty to one hundred tons, ten dollars; from one hundred to three hundred tons, and upwards, twenty dollars.

Sec. 2d. Be it further enacted, &c., That the captains, owners, or agents of steamboats plying within the waters of this State, shall apply for such an examination and certificate as is required in the first section at least once in three months, as far as practicable; and, when it is not so, then the fact shall be shown by the owner or agent.

Sec. 3d. Be it further enacted, &c., That any captain, agent, or owner of a steamboat, who shall fail to obtain the certificate of the examination hereinbefore provided for, shall be barred from the recovery of any claim for freight or insurance that may accrue when without said certificate; and should any loss or damage to property in such case accrue, in consequence of the breaking or bursting of any part of the machinery, the owner or agent shall be responsible to the shipper for full amount of said loss or damage.

Sec. 4th. Be it further enacted, &c., That the captain of any boat that may not have been examined, and obtained the certificate hereinbefore required, shall, in the event of any loss or damage to property occasioned by the breaking or bursting of any part of the machinery, be subject to a fine of not less than five hundred nor more than two thousand dollars, and an imprisonment of not less than three months nor more than three years; and that, in the event of loss of life being the result of such accident, then such officer shall be adjudged guilty of manslaughter.

Sec. 5th. Be it further enacted, &c., That any accident, except such as are impossible to be foreseen or avoided, that may happen from racing, carrying higher steam than may appear from the certificate to be consistent with safety, running into or afoul of another boat, or that may occur whilst the captain, pilot, or engineer, is engaged in gambling, or attending to any game of chance or hazard, or whenever an accident happens from the boat being overloaded, the owner of the boat shall be subject to the penalties provided for in the third section of this act; and the officer or officers of said boat violating the provisions of this act shall be subject to the penalties provided for in the fourth section thereof.

Sec. 6th. Be it further enacted, &c., That for any false certificate, or one *giving* without the thorough examination contemplated by this act, the engineer who may be appointed to make the examination of engines shall be dismissed from office, and be fined not less than three hundred nor more than one thousand dollars, and imprisoned not less than one nor more than five years; and that the Governor may, on satisfactory representation of the incapacity, negligence, or inattention of

the engineer, dismiss him, and appoint a successor, subject to the confirmation of the Senate.

Sec. 7th. Be it further enacted, &c., When gunpowder is shipped on board of a steamboat, which shall at all times be stowed away at as great a distance as possible from the furnace, a written notification of the fact shall be placed in three conspicuous parts of the boat; and in the event of such notification not being so exhibited, then, for any loss of property or life for which the powder may be deemed the cause, the owner shall be liable to the penalty provided in the first section, and the captain to the penalties in the fourth section, of this act.

Sec. 8th. Be it further enacted, &c., That any person or persons who shall ship or put on board, or cause to be shipped or put on board, of any steamboat within this State any gunpowder, without giving notice thereof, at the time of making the shipment, to the master or clerk of said boat, shall be liable to a penalty of two hundred dollars, which may be sued for and recovered before any court of competent jurisdiction by the owner, captain, or clerk of said boat, for his or her own use and benefit; and in case of any loss of property in consequence of gunpowder being on board of said boat, the shipper or shippers that shall have failed to give due notice as herein required shall be liable for all losses of property or damage done thereto, or for any injury done to any person, or to their family; and in case of the loss of the life of any individual on board, in consequence of gunpowder being on board, the person or persons who shall have shipped the same without giving due notice thereof, shall, on conviction thereof, be adjudged guilty of manslaughter, and punished accordingly.

Sec. 9th. Be it further enacted, &c., That the captains of all steamboats plying within the waters of this State, or other officers commanding the same, shall be bound to post up two copies of the present act, one in French and one in English, in some conspicuous parts of their boats, under a penalty of one hundred dollars.

Sec. 10th. Be it further enacted, &c., That it shall be the duty of the master and pilot of a steamboat, when descending any river or stream in the night, within the limits of this State, when within one mile of an ascending steamboat, to shut off the steam and ring the bell, and permit the boat to float upon the current of the river, until the ascending boat shall have passed; and the master and owner of the ascending boat shall then assume the responsibility of stearing clear of the descending boat, and be liable in damages to the extent of the injury which may be sustained.

Sec. 11th. Be it further enacted, &c., That the engineer so named may, in case of sickness only, appoint in his place a deputy, who is to be approved by the Governor; and it shall be the duty of the engineer to have an office in the city or suburbs of New Orleans.

Sec. 12th. Be it further enacted, &c., That from the month of July next, it shall be the duty of the captains and owners, or the agent of every steamboat, under the penalties mentioned in the fourth section of

the present act, to substitute an iron chain to the rope now used as a tiller rope.

Sec. 13th. Be it further enacted, &c., That the Governor be requested to transmit copies of this act, immediately after its approval, to the Governors of all the States and Territories bordering on the Mississippi and its tributary streams.

Signed, ALCEE LABRANCHE,
Speaker of the House of Representatives.

Signed, C. DERBIGNY,
President of the Senate.

Approved March 6th, 1834.

Signed, A. B. ROMAN,
Governor of the State of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana:

Office of the Secretary of State.

I do hereby certify, the foregoing act, entitled an act relative to steamboats, approved March 6th, 1834, to be a true and correct copy from the original in my custody, and that said act is unrepealed and now in full force.

In testimony whereof I have hereunto set my hand, and affixed the seal of the State, at New Orleans, this twentieth day of December, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States of America the seventieth.

[L. S.]

ROBERT CARTER NICHOLAS,
Secretary of State.

THE UNITED STATES OF AMERICA,
District of Ohio, ss:

I, William Miner, clerk of the circuit court of the United States for the district of Ohio, do hereby certify, that the above and foregoing is truly taken and copied from the records of said court in my office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said circuit court, at Columbus, this 18th day of August, A. D. 1847, and in the 72nd year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk.*

Clerk's fees for this transcript $8.50.

Assignment of errors.

And now comes the said defendant, now plaintiff in error, by his attorney, and says, that in the foregoing record and proceedings there is error, in this, to wit:

First. The court erred in refusing to charge the jury, as requested by the defendant, upon the subject of the statute of Louisiana, and in giving